J.B. Koshy & T.R. Ramachandran Nair, JJ.

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Crl.Appeal.NOs.934, 944 & 1154 of 2004

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Dated this the 11th day of April, 2007

JUDGMENT

T.R. Ramachandran Nair, J.

The appellants in the above appeals are accused 1 to 3 in Sessions Case No.353/2003 of the Court of Addl. Sessions Judge (Adhoc-II), Thodupuzha. All the three accused were found guilty under Sections 302, 392 and 201 I.P.C. They have been sentenced to undergo imprisonment for life and to remit fine of Rs.10,000/- each under Section 302 I.P.C. They were also sentenced to undergo rigorous imprisonment for a term of 10 years and to remit a fine of Rs.5,000/- by each under Section 392 I.P.C. The accused were further sentenced to undergo rigorous imprisonment for 7 years and a fine of Rs.2,000/- by each of them under Section 201 I.P.C. Set off allowed.

2. This is a case where the accused, three in number, are alleged to have murdered one Manikandan and robbed away a car bearing Registration No.KL-7 AF 1010 of which the deceased was the driver. The prosecution case in short is the following:

3. The incident occurred on 29.3.2002. The car which was being

driven by the deceased was an Indica car owned by P.W.19. It was operated in association with M/s. Classic Tours and Travels, Ernakulam which is a proprietary concern owned by P.W.7. It was being operated as a tourist taxi at the relevant time. On the date of incident, accused 1 to 3 hired the car for a trip from Ernakulam to Kattappana. On the way, when they reached near a forest area, they inflicted serious stab injuries on Manikantan who was left in the forest area itself and stole the car and took it to Kambam in Tamil Nadu.

3. There are no eye witnesses to the incident and the entire prosecution story is rested upon circumstantial evidence. The learned Sessions Judge found that the prosecution has been able to prove the circumstances amply and the chain of circumstances proved established the guilt of the accused to the hilt and accordingly convicted and sentenced them.

4. Before this court, the counsels for the appellants mainly argued that the prosecution has developed only a false story before the trial court that at any rate, all the chain of circumstances have not been proved to the hilt, that the deceased was also involved in the act of stealing the vehicle and the real culprits are being shielded by the prosecution and the accused are only made scapegoats. Vehement arguments have been raised

regarding the whole exercise done by the investigating agency for identification of the accused by conducting the test identification parade and that the accused are, at any rate, entitled to the benefit of reasonable doubt.

5. It was also argued that the evidence regarding the recovery of material objects and the weapon used by the accused are also not credit worthy and hence the findings rendered by the trial court relying on the said evidence are also liable to be set aside. Counsel also pointed out that certain aspects required proof by way of scientific evidence, the said best evidence was suppressed by the prosecution and the same is a serious lapse affecting the whole case . It is also pointed out that the crucial witnesses are associates/friends of the deceased and without any independent evidence of other witnesses, the guilt of the accused should not have been presumed.

6. In the light of the above arguments, a detailed discussion of the evidence of the witnesses is necessary. P.W.1 is the person who had given the First Information statement, Ext.P1 to the police in connection with the incident. He was the conductor of a bus bearing Registration No.KL-6A 7907 operated by Prakash Motors, which was being run in the route Thopramkudi-Muvattupuzha. While the bus was proceeding to Thodupuzha at about 5.45 p.m. when it reached a place called Cheribhagam, one person who was crawling on the side of the road, showed signal to stop it and even

though the bus passed him, since the conductor saw him signalling, he gave bell to stop the vehicle. On seeing the bus stopping, he alighted the bus and was seated on one of the right side seats. According to P.W.1, injuries were seen on his head and neck and blood was also seen. P.W.1 asked him what had happened. It was repeated by the other passengers also. But he was not in a position to speak and was unable to respond obviously due to the injuries on his neck and head. According to P.w.1, he went out of the bus to see whether there was any vehicle accident but did not find anything. On seeing his condition, the vehicle was taken to a hospital and during this journey the man lied down in the bus itself. Ultimately, the vehicle reached the Taluk Hospital, Thodupuzha. In between, they had informed the police and one of the policeman was also deputed to accompany the injured. On reaching the hospital, the doctor examined him and declared him dead. He gave the F.I. statement in the Kulamavu Police Station in the morning. He identified MOs.1 and 2, the shirt and pants which were worn by the deceased on that day.

7. P.w.31 had conducted the autopsy on the body and Ext.P19 is the postmortem certificate issued by him after the postmortem examination in the Medical College Hospital, Kottayam. There were 22 injuries noted therein out of which injuries 1 to 7 and 15 were fatal injuries. His opinion

was that death was due to the injuries caused on the head and neck. The injuries noted in Ext.P19 are the following:

> "1. Lacerated wound, 1.5 x 0.5 cm. bone deep on right side of head 6.5 cm. above ear.
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> 2. Lacerated wound 4 x 2 cm. bone deep on the top of middle of head.
>
> 3. Lacerated wound 3 x 1 cm. bone deep, on left side of head, 10 cm above ear.
>
> 4. Contused abrasion, 2 x 1 cm. on the right side of forehead, 1 cm. above outer end of eyebrow.
>
> 5. Lacerated wound 3.5 x 0.5 cm. bone deep horizontal over left eyebrow.
>
> 6. Lacerated wound 2.5 x 0.7 x 0.3 cm. oblique on left side of forehead, lower inner end 1.5 cm. outer to midline and 0.5 cm. above eyebrow.
>
> 7. Contused abrasion, 6 x 4 cm. on left side of forehead, 1 cm. outer to midline and just above injury No.6. Floor of anterior cranial fossa showed comminutted fracture over an area 9 x 7 cm. Under surface of left frontal lobe of brain showed laceration 7 x 5 x 0.3 cm. Subarachnoid bleeding on both sides of brain.
>
> 8. Contused abrasion 2.5 x 2 cm. pm on the front of nose, 1.5 cm below root.
>
> 9. Contused abrasion, 2 x 1 cm on the tip of nose.
>
> 10. Contused abrasion, 3 x 1.5 c.m. over left cheek. Maxilla bone underneath showed frcture. The upper left central incisor tooth showed fracture separation and was missing.
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> 11. Contusion 4 x 2 x 0.5 cm. on the middle of inner aspect of upper

lip.

12. Lacterated wound 2 x 1 x 0.5 cm. on the middle of inner aspect of lower lip.

13. Contused abrasion, 7 x 3 cm over the chin

14. Incised wound 14 x 1 x 0.3 cm. oblique left side of neck, lower front end being 4 cm outer to midline and 3 cm below jaw bone and back end at midline on back of neck.

15. Incised punctured wound, 3.3 x 0.8 x 4 cm. horizontal on the front of middle of neck, 2 cm above the sternum. the trachea underneath front cleanly cut. Both ends of wound sharply cut.

16. Abrasion 0.8 x 0.5 cm on front of right leg, 9 cm below knee.

17. Contused abrasion 6 x 2 cm. on outer aspect of right ankle.

18. Contused abrasion 3 x 0.8 cm. on inner aspect of right ankle.

19. Contusion 7 x 5 x 1 cm. on left palm, at root of thumb.

20. Contused abrasion 6x5 cm on front of left arm, 8 cm below top of shoulder.

21. Incised wound 0.7 x 0.5 x 0.5 cm. on the front of left forearm 6 cm above wrist.

22. Contused abrasion 6x2.5 cm on the top of left shoulder."

8. The hiring of the Indica car by accused 1 to 3 are proved through P.Ws.2, 3, 6, 7 and 8. The accused had approached P.W.6 originally, who was the driver of a tourist taxi bearing registration No.KL-7 AG 6055. It was an Indica car and was parked near the north over bridge, Ernakulam in

front of M/s. Broadway Travels. According to P.W.6, he was working as a driver in a car operated by M/s. Broadway Travels situated in Ernakulam North. P.W.6 deposed that at about 12 noon on 29.3.2002 accused 1 to 3 approached him for a trip to Kattappana stating that they want to bring down computer components from there. Since he was about to make a trip to Thiruvananthapuram, he told them to meet one Raveendran (P.W.2). Immediately he left for Thiruvananthapuram and only when he returned, he knew about the murder of Manikantan. He identified all the three accused in court and he had identified them in the test identification parade also. The evidence of P.W.6 shows that he had occasion to talk to the appellants and he could reflect the incident vividly.

9. The evidence of P.W.6 is corroborated in material particulars by the evidence of P.W.2. P.W.2 at that time was a driver of an ambassador car with registration No.KCF 7150. This car was also being operated by M/s. Broadway Travels. According to P.W.2, P.W.6 asked him whether he will be able to oblige the accused for a trip to Kattappana as P.W.6 was already engaged to go to Trivandrum. P.W.2 immediately agreed and accused 1 to 3 came to him and informed about the purpose for the trip. When P.W.2 showed them the car, he was told that they do not want an ambassador car but they want an Indica car. While they were talking, P.W.3 came to the

spot with an Indica car with Reg. No.KL7-AA 5272. When P.W.3 was asked whether he was willing to have the trip, he told P.W.2 that he has got a trip to Calicut and he assured the accused that another vehicle would be arranged. Accordingly, P.W.3 contacted the deceased through mobile phone. The deceased responded to the call and came down with the vehicle KL-7 AF 1010. P.W.2 deposed further that the deceased agreed to go to Kattappana in his car and the trip started at about 12.30 p.m. He also identified M.O.1 and M.O.2, the shirt and pants worn by the deceased at the relevant time. He had identified the accused in the test identification parade.

10. In the cross examination also, P.W.2 has clearly stated that all the three accused came together and the deceased was contacted over mobile phone under the north over bridge. All the three accused were identified by P.W.2 in court. He also stated that even though normally the drivers have to wear their uniform like white shirt and white pants, 29.3.2002 being Good Friday, that formality was not followed and the deceased was wearing his own usual dress. A suggestion was put to him that before identification parade was conducted, the photographs of accused were published in newspapers and whether he had seen it. This was denied by him.

11. The evidence of P.Ws.2, 3 and 6 are amply corroborated by the

evidence of P.W.7. P.W.7 is a person who was operating Classic Tours and Travels and the car driven by the deceased was entrusted with him for renting out. The evidence of P.W.7 shows that on the date of incident at about 12.30 p.m. the deceased telephoned him and informed him that he is on a trip to Kattappana. P.W.6 asked him whether the party is familiar to him and it was replied by the deceased that even though he was not directly known to them, his friend had introduced. His evidence also shows that the deceased informed him that the accused will be able to pay the money only after reaching Kattappana and even though P.W.7 cautioned him not to leave without getting advance and wanted the deceased to bring them to his office, the deceased informed him that as the party was entrusted to him by his friend, he was leaving for the trip. It is P.W.7 who apart from P.Ws.8 and 20, had identified the body on 31.3.2002 in the Medical College Hospital as that of deceased Manikantan. He had also identified the dress worn by the deceased at the relevant time.

12. Thus, the prosecution has relied upon the evidence of P.Ws.2, 3, 6 and 7 to prove that the car driven by the deceased was hired by the accused on the date of incident for going to Kattappana. Even though the counsel for the appellants/accused strongly argued for the position that their evidence is only artificial and that these witnesses have only been planted

by the prosecution, we find that the said argument is not having any force in the light of the clear evidence available in the case. Apart from the evidence of P.Ws.2, 3, 6 and 7 there is evidence of P.W.8 which corroborates the evidence of the other witnesses.

13. P.W.8 is also another driver of an ambassador car bearing registration No. KL 7 9090 and engaged by Classic Tours and Travels. According to P.W.8, while he and Manikantan were sitting in the ambassador car just near the office of the travel agency, Manikantan received a telephone call through mobile informing him that there is the possibility of a trip to Kattappana. Immediately Manikantan responded and went for finalising the trip with his car. He also identified the dress worn by the deceased at the relevant time. Thus, the entire chain of circumstances leading to the hiring of the vehicle has been proved to the hilt by the prosecution through their evidence.

14. Even though the counsel for the appellants strongly argued that their evidence is shaky and is not credit worthy, the argument developed does not appear to be sound. One of the main arguments raised against the acceptability of their evidence is that they did not go to see the dead body of Manikantan in spite of the fact that information reached them about the murder of Manikantan, in the Medical College. The evidence of P.W.7

shows that it was he who identified the dead body as that of Manikantan. It is clear from the evidence that the deceased was operating the vehicle as authorised by the travel agency owned by P.W.7. Therefore, it was only normal that the person who identified the dead body was P.W.7 and there is nothing unusual in the other witnesses not going immediately to the Medical College Hospital and confirming the dead body as that of Manikantan. Because of that circumstance alone their evidence cannot be discarded. P.W.8 another driver and P.W.20, the father of the deceased had also gone to the Medical College Hospital to identify the dead body. The next argument is that they are friends of the deceased and therefore the prosecution has planted them so as to form the chain of circumstances. This argument also cannot be accepted for more reasons than one. Firstly, the prosecution was attempting to prove the transaction of hiring the vehicle through these witnesses. The depositions of those witnesses will amply show that all the witnesses, viz. P.Ws.2, 3, 6 and 7 are categoric about the accused approaching the travel agency for hiring an Indica car for a trip to Kattappana. It is of importance to notice that in the cross examination no attempt had been made to challenge effectively their version regarding the hiring of the vehicle by the accused. The evidence of P.W.7 also would show that the deceased had informed him about the trip just before starting

the journey and he had contacted him through phone even while he was proceeding with the trip. The owner of the travel agency and other witnesses are in the business of renting out cars and such a transaction is only a normal one. Therefore, it cannot be stated that their evidence is only artificial and does not inspire confidence in the court. Their evidence is credit worthy and natural and therefore the same is acceptable.

15. Counsel for the appellants relied upon the following decisions of the Hon'ble Supreme Court, i.e. **Bodh Raj alias Bodha and others v. State of Jammu and Kashmir** (AIR 2002 SC 3164), **State of U.P. v. Satish** (AIR 2005 SC 1000), **Din Dayal v. Raj Kumar alias Raju and others** (1999 Crl.L.J.467) and **State of Punjab v. Sucha Singh and others** (AIR 2003 SC 1471) in support of their contentions that the evidence adduced by the prosecution in this case are not sufficient to prove the accused guilty. In AIR 2002 SC 3164, their Lordships have held that circumstantial evidence can be the sole basis for conviction if all the conditions are satisfied. The conditions to be satisfied have been reiterated therein which are the following:

> 1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may' be established;

> 2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
>
> 3) the circumstances should be of a conclusive nature and tendency;
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> 4) they should exclude every possible hypothesis except the one to be proved; and
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> 5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

The said legal position was reiterated in AIR 2005 SC 1000. Counsel for the appellants relied upon the decision of the Hon'ble Supreme Court in **State of Rajasthan v. Mani Ram** (AIR 2001 SC 2430) to contend for the position that the conduct of the witnesses, viz. P.Ws.2, 3 and 6 in not visiting the Medical College Hospital immediately after coming to know of the murder, is not a natural conduct and therefore their testimony should have been discarded. The facts of the case relied upon by the counsel for the appellants are totally different. That was a case where one of the eye witnesses took no steps to save the deceased from attack by the accused. His evidence was also in conflict with the medical evidence. The Hon'ble Supreme Court did not rely upon the evidence of P.W.11 also as the said witness did not take any steps to save his grandmother with whom he was

living, from the attack of the accused. It is only in the above circumstances that their Lordships found that the conduct is not a natural one. In the decision of the Honourable Supreme Court in 1999 Crl.L.J. 467 also the facts are different. In that case the conduct of the witnesses was found unnatural due to the fact that the eye witnesses who were closely connected with the deceased, did not accompany the deceased to the hospital nor had informed the police about the incident. One of the eye witnesses who was a close relative of the deceased and who had accompanied the deceased to the hospital also did not disclose the name of the accused to the police. It was therefore held that this creates serious doubt regarding truthfulness of evidence of eye witnesses. In the decision reported in AIR 2003 SC 1471, the facts were that the eye witness who was the father of the deceased, did not try to rescue his son who sustained as many as 24 injuries. Therefore, it was held that this conduct makes his presence doubtful. It was in these circumstances the evidence of the eye witness was found most unnatural.

16. Going by the facts of this case, there is nothing in common with the cases cited by the counsel for the appellants. Those are all cases where the eye witnesses even though claimed to have witnessed the incident, did not render anything so to make their position a natural one. Thus, their evidence did not inspire confidence. The circumstances herein are totally

different. Merely because P.Ws.2, 3 and 6 did not go to the Medical College Hospital for identifying the body of the deceased, they will not become untrustworthy. P.W.7 under whom the deceased was operating the taxi, had identified the dead body as that of Manikantan, apart from P.W.8 and P.W.20. Hence, the conduct attributed to P.Ws.2, 3 and 6 in not visiting the hospital to identify the body or to see the dead body, there is not an unnatural one warranting to treat their evidence as untrustworthy. Therefore, we reject the said argument of the counsel for the appellants. The principles stated in those decisions have no application to the facts of this case.

17. The other argument raised by the counsel for the appellants is in regard to the non-acceptability of the evidence regarding identification of the accused in the test identification parade conducted by the investigating agency. The main argument is that the witnesses had the opportunity to see the photographs of the accused through newspapers and therefore their identification in the identification parade is tainted. As a matter of fact, all the witnesses denied seeing the photographs in the newspapers. But even otherwise there is no case that these photographs if at all published, was at the instance of the investigating officer. If at all photographs have been published, the responsibility will lie only with the publisher of the

newspaper and not that of the investigating agency. Even otherwise, going by the principles stated by this court in the decision reported in **Sajeevan v. State of Kerala** (1993 (1) KLT 712) the evidence given by the witnesses identifying the accused in the identification parade cannot be rejected solely on the ground that photographs of the accused were published in the newspapers. This court and the Honourable Supreme Court have clearly held that simply because of that reason the evidence cannot be eschewed. The following paragraph of the decision in 1993 (1) KLT 712 is apposite to the context herein:

> " It is not the work of the investigating agency, but the exercise of journalistic calibre. Investigating agency has, normally, no control over such journalistic adventures. Hence such publication cannot be prevented by the police in a society where freedom of press is guaranteed. It has become very usual that in sensational criminal cases newspapers would display enthusiasm to publish photos of different facets including photos of the accused. It is not necessary that witnesses should see such photos in the newspapers. Even if a witness happens to see the photo of a particular accused in a newspaper we are not inclined to sideline his evidence regarding identification on that score alone. It must be remembered that Kerala is a State where there is proliferation of newspapers. How can a witness be made responsible if newspapers publish the photograph of the accused? If we are to laid down a proposition that identification evidence of a witness is liable to be thrown over-board in cases where newspapers publish the photo of the accused, a good number of witnesses in Kerala would be exposed to the perils of being disbelieved on account of the journalistic adventure and high density of print media in this state. Of course it is open to the court to decide whether a witness's evidence

> regarding identification was really influenced by such publication."

Apart from that, the evidenciary value of test identification parade is only so as to corroborate the evidence before the trial court. In **Amitsingh Bhikamsigh Thakur v. State of Maharashtra** ((2007) 2 SCC 310), the Apex Court has stated the legal position in regard to the identification of the accused through a test identification parade. It was held as follows:

> "The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eye witnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code of Criminal Procedure, 1973 (in short "the Code") and the Evidence Act, 1872 (in short "the Evidence Act"). It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution."

The conduct of a test identification parade is only for helping the

investigating agency to proceed in the right lines for booking the real culprits. Merely because of any such factors like publication of photographs in newspapers, the veracity of the identification parade is not lost. The evidence of P.Ws.2, 3, 6 and 7 shows that they had occasion to talk to the accused when they came for hiring a taxi. P.W.6 was initially approached by the accused but subsequently on information by P.W.6, they approached P.W.2. Thus, all these witnesses had ample opportunity for seeing them and also spoke to them in connection with the transaction of hiring the car. Further, the evidence is that they came to the spot at about 12 noon and the vehicle left the scene at 12.30 p.m. Therefore, it is only natural that the witnesses had the required opportunity to see their features and familiarise with them at least for the purpose of going through the transaction. Therefore, it is not a case where the accused were never seen or known by the above witnesses before the incident in question. It is only through their mediation the deceased was contacted for facilitating the tour. Therefore, the infirmities pointed out in the identification made by the witnesses during the test identification parade have no importance at all. It is of importance to notice that when the witnesses had ample time before the identification parade itself to know the accused and remember them, their identification in court itself can be basis for conviction. The Apex Court in

the decisions reported in **State of Maharashtra v. Sukhdev Singh and another** ((1992(3) SCC 700 and in **Ronny alias Ronald James v. State of Maharashtra** (AIR 1998 SC 1251) has held that if a witness had any particular reason to interact with the accused and hence could remember about the identity of an accused, in that event, upon the solitary evidence of identification of the accused in court for the first time, conviction can be based. In AIR 1998 SC 1251 it has been further laid down that where the witness had a chance to inter act with the accused or that in a case where a witness had an opportunity to notice the distinctive features of the accused which lends assurance to the testimony in court, the evidence of identification in court for the first time by the same witness cannot be thrown away merely because no test identification parade was held. Their Lordships of the Supreme Court followed the said principles in the decision reported in **Dana Yadav alias Dahu and others v. State of Bihar** (AIR 2002 SC 3325). Counsel for the appellants relied upon the said decision to argue for the position that identification for the first time in court cannot be accepted as according to them, the identification parade is vitiated by the fact that photographs of the accused were published in newspapers. But the principles stated by the Hon'ble Supreme Court clearly supports the

prosecution in this case. It has been held that the identification of the accused made in court by a witness is substantive evidence whereas that of identification in the identification parade is, though a primary evidence but is not substantive and the same can be used only to corroborate the identification of accused by a witness in court. The previous identification in the test identification is a check valve to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law. Their Lordships also held that in exceptional circumstances only , evidence of identification for the first time in court, without the same being corroborated by previous identification in the test identification parade or any other evidence can form the basis of conviction. As already noted above, the decisions of the Honourable Supreme Court in (1992) 3 SCC 700 and AIR 1998 SC 1251 clearly cuts at the root of the arguments raised by the counsel, as this is a case where the witnesses had sufficient opportunity to inter act the accused thereby had reasons to remember their identity. Thus, the argument fails and the same is rejected.

18. The next items of circumstances relied upon by the prosecution is the evidence of P.Ws.4 and 5. P.W.4 is the proprietor of an automobile workshop named "Ajeems Workshop" at Kambam in Tamil Nadu. His

version as regards the link to connect the accused with the crime is that accused 1 to 3 approached him in the workshop on 29.3.2002 at about 8.30 p.m. and offered to sell the Indica car with registration No.KL-7 AF 1010. According to him, he directed them to arrive in the morning the next day as it was late already. When he returned in the morning, he saw the accused with the Indica car in the workshop. Thereafter, he informed one of his friends, Annaraja, about the availability of an Indica car for sale. He came down and inspected the vehicle for purchasing it. Since only photo copies of the documents were shown, P.W.4 demanded original documents and accused left the shop informing him that the originals would be brought to him later. P.W.4 has clearly identified accused 1 and 2 in court as the persons among the three who had approached him on that day. According to him, when he came back in the afternoon, the accused had left and they did not return thereafter also. Since he felt some suspicion about their conduct, he informed the incident at Kumali and Kambam Police Stations. The police party from Kanjar Police Station arrived in the workshop on the next day and while they were questioning the inmates of the workshop, accused 1 and 2 came with the Indica car with registration No.KL-7 AF 1010 and they were arrested then and there. P.W.4 knew about the robbery and murder when the police told him about it. P.W.4 also saw the 2nd

accused being taken by the police to recover a packet from a nearby incomplete building and the packet contained two shirts, a kaily, two pairs of chappals and a pant. P.W.4 also identified accused No.3 also as the person who accompanied accused 1 and 2 on the first day and he was the man who went back offering to bring the original papers of the car. By about 8-9 days thereafter, he was brought by the police to the workshop and he identified accused No.3 as one among the persons apart from accused 1 and 2 who approached him on 29.3.2002 offering to sell the car. The version of P.W.4 is natural and convincing. The evidence is clearly trustworthy. It could not be shaken in cross-examination by the accused.

19. The evidence of P.W.4 is corroborated by the evidence of P.W.5 also which was rightly relied upon by the learned Sessions Judge. He was also present at the time when the accused met P.W.4 and when they offered to sell MO.31 car to P.W.4.

20. Apart from the above evidence of P.Ws.4 and 5, there are other circumstances to form the link of the chain to connect the complicity of the accused with the crime. Their presence at Kambam on the evening of 29.3.2002 is amply supported by the evidence of P.Ws. 9 and 24. P.w.24 who is the owner of “Niyazi Traders & Gents Park” at Kambam, has deposed about the accused coming to the shop on 29.3.2002 for buying

textile goods. They brought two full sleeve shirts and two dhotis from his shop and M.O. 4 is the plastic kit used in his shop which was identified by P.W.24. He also identified accused 1 to 3 during the investigation conducted by the police. P.W.9 gave evidence that on 30.3.2002 the third accused approached him for furnishing a loan and he gave Rs.20/- to him on the same day. Thus, the above evidence of P.W.4, P.W.5, P.W.9 and P.W.24 amply established the facts about the possession of the property, viz. MO 31 car by the accused soon after the death of Manikantan on 29.3.2002. The evidence of P.Ws.2, 3, 6, 7 and 8 clearly established the fact that the accused had hired the car for a trip from Ernakulam to Kattappana. Hence, the act of the accused in committing murder for the purpose of committing robbery of the car is clearly established. The accused have no satisfactory explanation also for the possession of the Indica car. In this connection, it may be relevant to consider the principle stated by this court in **Sathyanesan v. State of Kerala** (1984 KLT 774) in the following terms:

> "The possession of the property of the deceased with the appellant soon after the occurrence is thus a strong circumstance against the appellant. This is a case where murder and robbery are proved to have been integral parts of one and the same transaction. Therefore it can be reasonably presumed that not only the appellant committed the murder of the deceased but also committed robbery of her gold ornaments which form part of the same transaction, in the absence of satisfactory explanation for the appellant as to how the property was transferred from the deceased to the accused."

In this case also murder and robbery formed parts of the same transaction, as proved in the evidence. Thus, possession of M.O.31 car driven by the deceased with the appellants is a strong circumstance against them.

21. The prosecution has been able to provide other links in the chain en route of their trip from Ernakulam to Kattappana. P.Ws.11 and 12 are the material witnesses who have been examined by the prosecution to prove the said links in the chain of circumstances. P.W.12 was selling articles in a bakery belonging to his brother at Kolpara on the fateful day. He identified accused No.3 as a person who alighted from the car KL-7AF 1010 and asked for a cola from the shop. According to him, one of the persons who came down from the car, went to the tea shop nearby. He had clearly stated that it was accused No.3 who came to him for purchasing cola. He noticed the persons alighting from the particular car as he was fond of fancy numbers of vehicles which prompted him to notice the car itself. It is also clear from the evidence that he had identified accused No.3 is the test identification parade conducted before the Magistrate's court. He identified accused No.3 before the Sessions Court also during examination. The other evidence is that of P.W.11, a panshop owner at Arakulam who deposed that the first accused came to the shop asking for a soda. The empty bottle of the soda (MO.15) was recovered from the place of occurrence by the police

which was identified by P.W.11 as the one bought by accused No.1 from the panshop. It is clear from their evidence that they had seen accused 1 to 3 on 29.3.2002 while they were travelling in the car driven by the deceased from Ernakulam to Kattappana.

22. Counsel for the appellants argued that the evidence of P.Ws.11 and 12 cannot be believed at all and they are only planted to supplement the links of the chain. We find that the argument of the counsel have only to be rejected. The recovery of MO.15 from the place of occurrence is clearly proved. There is no improbability as far as the evidence of P.W.12 also is concerned. Hence, it cannot be termed that they are only planted witnesses. Nothing could be brought out in their cross examination also to discredit their version.

23. Then the counsel further argued that there is considerable delay in conducting the identification parade and therefore the said evidence could not have been relied upon by the prosecution. As far as the evidenciary value of test identification parade is concerned, the Apex Court has reiterated in various decisions that it does not constitute substantive evidence and it can only be used as corroborative of the statements in the court. Identification parade is being conducted by the investigating agency to lend assurance to the identity of the accused by the witnesses. Their

Lordships of the Supreme Court have held in the decision reported in **Amitsingh Bhikamsingh Thakur v. State of Maharashtra** (2007 (2) SCC 310) in paragraph 13 in the following terms:

> "It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution."

The above dictum clearly points out the fact that even if there is some delay, since the circumstances were beyond control, it cannot be said to be fatal to the prosecution. In this case, after the arrest of the accused, they were being taken to various places and the identification parade was conducted on 25.4.2002. The arrest of accused 1 and 2 was on 31.3.2002 and that of accused NO.3 was on 3.4.2002. P.W.38, the investigating officer has stated in detail the various steps taken for investigating the crime during the said period. There is no allegation that the identification parade is vitiated by any other circumstances except the argument that their photographs have been published in the newspaper, and the witnesses have denied the suggestion about seeing the photographs thus published. In the light of the facts revealed, it cannot be stated that there is considerable delay in

conducting the identification parade warranting rejection of the said evidence. The counsel for the appellants in this context, relied upon the following decisions of the Supreme Court also to attack the identification parade conducted, viz. **K.S. Sadnanadan v. State of Kerala** (1999 SC 1086), **Ahmed Bin Salam v. State of Andhra Pradesh** (AIR 1999 SC 1617), **Manzoor v. State of Uttar Pradesh (**1982 SCC Crl. 356) and **Pradeepan v. State of Kerala** (2007 (1) KHC 13). We find that these cases are distinguishable from the facts of the present case.

25. In 1982 SCC Crl. 356, the facts of the case are different from the facts of this case. Therein the identification parade was conducted two months after the date of occurrence. The evidence of P.Ws.1 and 2 in that case was not accepted because of the fact that the witnesses did not give the investigating officer the description of any of the culprits when he examined them and in these circumstances it was held that the witnesses could not have identified the appellants two months after the occurrence. The said dictum will not apply to the facts of this case. In AIR 1999 SC 1086 also, the facts are different, as the witnesses were shown the photograph of deceased before the test identification parade, and hence it was found as unreliable. In **Ahmed Bin Salam v. State of Andhra Pradesh** (AIR 1999

SC 1617) also actually the facts shows that it was not an identification parade and it was only a case where the witness was only replying to the question posed by the police whether he could identify the persons. The Supreme Court held that it was not a test identification parade. The facts of the case decided by the Honourable Supreme Court in 2007 (1) KHC 13 are also not similar. There, it was found that the test identification parade was conducted after great delay which is not explained. Therefore, the facts of the present case are not similar to any of the above decisions cited by the counsel for the appellants. Here in this case, there has not been any delay at all in conducting the test identification parade and at any rate, there is no long delay also and due explanations have been given in the matter. Hence, we reject the said argument of the counsel. The evidence of P.W.38, investigating officer shows that he had addressed a letter to the Superintendent of Sub Jail, Muvattupuzha on 11.4.2004, not to allow visitors to the accused in view of the conduct of test identification parade. Even without the identification parade, here there are sufficient evidence to show that the witnesses had correctly identified the accused.

26. The other items of evidence is the recovery of material objects and articles effected by P.W.38 under Section 27 of the Evidence Act. Counsel for the appellants argued that the recoveries effected based on the disclosure

statement made by accused 1 and 2 are beset with various infirmities and therefore it does not satisfy the requirements of Section 27 of the Evidence Act. Accused 1 and 2 were arrested on 31.3.2002 at Kambam. Even though the counsel argued that recoveries effected are manipulated, a reading of the evidence of P.W.38 as well as the disclosure statements made by the accused proves otherwise. The important articles recovered include Mos.4 to 10 which are articles like pants, shirt, dhothies, chappals and a plastic cover found in the car which belonged to the deceased. The disclosure made by accused No.2 led to the recovery of Mos.37 and 38, two bloodstained pants. MO.39 knife used by the accused for inflicting injuries on the deceased was also recovered based on the confession statement Ext.P12(a). It is also proved by the evidence of P.W.27 who is a signatory to Ext.P12 mahazar. Based on the confession statement made by the second accused, recoveries of Mos.20 to 24 and M.O.42 and M.O.47 which are the records kept in the car, were effected. They include a conduct certificate, insurance from Benz Motors, vehicle releasing order from Benz Motors, registration certificate and community certificate of the deceased. They were kept in a blue cover of Indus Ind Bank. Similarly, on the basis of the confession statement given by accused No.2, recoveries of MO.11 series, MO.12 series, MO.25 to MO.27 and MO.43 to MO.45 were effected.

They include burned portion of photo copy of RC Book, photo copy of permit, warranty card, owner's manual, trip vouchers of M/s. Classic Tours & Travels, a letter from Kerala Public Service Commission and an application receipt for supply of Bharat Gas. Next important item of recovery is the one made on the basis of the confession statement given by third accused at Kambam. The same is the burned portion of the RC Book of the car marked as MO.30 series. The prosecution has also effected recovery of M.O.14 brief case belonging to the deceased which was kept in the car, as well as the mobile phone (MO.3) calculator (M.O.21) and documents relating to the car, based on the confession statement given by second accused.

27. It is evident from the confession statement of the accused and from the crecoveries effected that those satisfy the requirements of Section 27 of the Evidence Act. Recently, the Apex Court in Amitsingh's case (2007) 2 SCC 310), has held about the various requirements of Section 27 of the Evidence Act in the following words in paragraphs 18 and 19:

> "18. At one time it was held hat the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in Pulukuri Kotayya case and in Udai Bhan v. State of U.P.

> 19. The various requirements of the section can be summed up as follows:
>
> 1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.
>
> 2) The fact must have been discovered.
>
> 3) The discovery must have been in conseuqence of some information received from the accused and not by the accused's own act.
>
> 4) the person giving the information must be accused of any offence.
>
> 5) He must be in the custody of a police officer.
>
> 6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.
>
> 7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible."

The important principle to be noticed is that the expression "fact discovered" includes not only the physical object produced but also the place in which it is produced and the knowledge of the accused as to this. Therefore, the knowledge of the accused in relation to the place of concealment is a relevant fact and is an incriminating circumstance as far as

the guilt of the accused is concerned. Even though the appellants' counsel argued that the recoveries have been manipulated, nothing could be brought out in the cross examination of witnesses and also from the investigating officer to discredit the said items of evidence. From the evidence adduced, the defence could not establish that the recoveries are artificial or fabricated. It was argued that P.W.38 was only extracting the confession from the accused to provide links in the chain. But there is no supporting data available in the case to doubt the veracity of the recoveries effected. Therefore, we reject the argument that the recoveries effected are not acceptable and the evidence is tainted.

28. Apart from the above items of recoveries effected, P.W.38 had recovered a soda bottle with name “Dual Club” without its cap from the scene of occurrence and the knife used by the accused for causing injuries. The place of occurrence is a forest area and the knife was concealed underneath the branches of a fallen tree and among the grass. The counsel argued that it is an open place accessable to all and therefore the said item of evidence cannot be relied upon. Admittedly, the place is a forest area and going by the place of concealment of the knife, we find that there is no infirmity in the said item of evidence also. It cannot be said that the place has got access to public and that the object was remaining in public gaze.

From the place of occurrence, other objects recovered are MO.15 soda bottle, MO.13 foot wear belonging to the deceased, MOs.35 and 36 blood stained stone and grass. The recovery of the above articles also supports the case of the prosecution as the place of occurrence is a lonely forest area on the side of the Highway leading from Ernakulam to Kattappana and it has already come out in evidence that the accused have hired the car for a trip from Ernakulam to Kattappana. Therefore, going by the principles stated in (2007) 2 SCC 310, we reject the argument of the counsel for the appellants.

29. It was further argued that the prosecution has failed to adduce any scientific items of evidence as regards the messages passed on by the deceased to P.Ws.3 and 7 using his mobile phone. It is argued that failure of the prosecution to produce the relevant evidence to show that the deceased had talked with P.Ws.3 and 7 in his mobile phone while the transaction for the trip was being fianlised, is fatal to the prosecution. It was also argued that it casts a suspicion on the entire prosecution story. When there is direct ocular evidence regarding the transaction which is trustworthy, the alleged failure, if any, of the prosecution to support the same with scientific evidence is not at all fatal. The defence could not discredit the evidence of P.Ws.2, 3, 6 and 7 as to the hiring of the taxi from Ernakulam for a trip to Kattappana. Further, immediately after the occurrence on the same day,

they were found in possession of the vehicle at Kambam. All the circumstances are telling and clearly establishes the chain of circumstances leading to the complicity of the accused in the crime. Therefore, the said argument is also not correct.

30. Counsel for third accused strongly contended that third accused has been falsely implicated in the crime and the evidence, if any, are not sufficient to prove his complicity with the crime. It was argued that he was not found in the company of accused 1 and 2 when they were arrested at Kambam on 31.3.2002. The recovery of articles through accused No.3 is not at all material one and only the part of the burned RC Book and some ash alone have been recovered based on the confession statement made by him. It was also strongly contended that the evidence of P.W.12 who had occasion to see the third accused when he approached P.w.12, to buy cola is clearly artificial. We have already discussed the evidence of P.Ws.11 and 12 and we have found that their evidence is also natural and convincing and the defence could not shake their evidence at all. Apart from that, the presence of accused No.3 along with accused 1 and 2 have been clearly spoken to by P.Ws.2, 3 and 6 at Ernakulam when they arrived there for arranging the car. It is clear from the evidence that all the three were together from the initial stages itself and the presence of third accused at

Kambam is also proved by witnesses P.Ws.4 and 5 as well as P.Ws.9 and 24. P.W.24 has clearly stated that all the accused came together for buying textile goods in his shop. P.W.9 had acquaintance with the third accused as he had been in his shop several times earlier and was prepared to part with Rs.20/- as a loan. Therefore, the evidence clearly established his presence at Kambam. When the hiring of the car from Ernakulam to Kattappana by all the accused have been proved and as it is found that accused NO.3 was also involved along with accused 1 and 2, his complicity in the crime cannot be disputed at all. One of the important factors regarding his complicity is the identification made by P.W.4 as accused No.3 is the person who was with accused 1 and 2 when they approached him in his workshop for selling it on 29.3.2002. Further, as found already, P.Ws.2, 3 and 6 had ample opportunity to talk to them before car was arranged and they had also identified him as the person who accompanied accused 1 and 2 for hiring the taxi in question. Therefore, as far as the involvement of accused No.3 is concerned, the same is clearly established from the evidence.

31. Here is a case where, for the purpose of committing robbery of the car, the accused pretended themselves to be interested in carrying electronic equipments from Kattappana and were successful in hiring the taxi. The prosecution has been able to prove the important links regarding

hiring of taxi through P.Ws.2, 3, 6, 7 and 8. Their presence at Kambam is proved through P.W.4 and other witnesses. The evidence of P.Ws.11 and 12 will show that all the three accused were travelling together along with the deceased on the way from Ernakulam to Kattappana. Counsel for the appellants had a further argument that the arrest of the accused at Kambam on 31.3.2002 by P.W.8 is also stage managed. According to the counsel, the evidence of P.W.4 would show that on 31.3.2002 he is alleged to have informed the police station, Kumali and Kambam about the suspicious character of the transaction of the proposed sale, but the arrest has been effected by P.W.38, the Circle Inspector of Police, Kanjar. In this connection, evidence of P.W.14 who was the Head Constable of Kumali Police Station at the relevant time, is important. His evidence shows that at about 7.30 p.m. on 30.3.2002 P.W.4 had contacted him over phone to the Police Station and asked whether there is any information regarding theft of any car. The information that three people had approached him for selling the Indica car has also been passed on and the number of the car was also mentioned. According to him, at the relevant time, another message was also available with him about the death of one unidentified person near the forest area at Kulamavu. Accordingly, he had transmitted the messages to Dy.S.P. Thodupuzha. The evidence of P.W.38, the investigating officer will

also show that messages have been received from these police stations and also from the Central Police Station, Ernakulam that a driver who had made a trip from Ernakulam to Kattappana had not returned with his taxi car. He was informed about it by the Dy.S.P . In view of the above evidence, the said arguments of the counsel for the appellants have also no merit. The above evidence only lends credence to the prosecution story.

32. The accused were found last seen with the deceased and they were found with the car driven by the accused and there was no proper explanation of the possession of the car also by them. It is seen that the chain of evidence is complete and the circumstances would clearly establish the guilt of the appellants. It is not a case where there are conjectures and suspicions as regards the links proved by the prosecution. It is a clear case where the circumstances have been established by cogent and reliable evidence. The circumstances proved are consistent with the hypothesis of the guilt of the accused and the only probable conclusion is against the innocence of the accused. It is of importance to notice one more aspect about the evidence given by P.Ws.13, 15 and 37 on the brutal attempts made by them for committing robbery of vehicles during the last week of March 2002 itself. Considering the totality of circumstances, we find that the

appellants are guilty of the crime and the conviction and sentence imposed on them is only to be confirmed and we do so. Hence, the appeals are dismissed.

(J.B. Koshy, Judge.)

(T.R. Ramachandran Nair, Judge.)

kav/

J.B. Koshy & T.R. Ramachandran Nair, JJ.

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driven by the deceased was an Indica car owned by P.W.19. It was operated in association with M/s. Classic Tours and Travels, Ernakulam which is a proprietary concern owned by P.W.7. It was being operated as a tourist taxi at the relevant time. On the date of incident, accused 1 to 3 hired the car for a trip from Ernakulam to Kattappana. On the way, when they reached near a forest area, they inflicted serious stab injuries on Manikantan who was left in the forest area itself and stole the car and took it to Kambam in Tamil Nadu.

3. There are no eye witnesses to the incident and the entire prosecution story is rested upon circumstantial evidence. The learned Sessions Judge found that the prosecution has been able to prove the circumstances amply and the chain of circumstances proved established the guilt of the accused to the hilt and accordingly convicted and sentenced them.

4. Before this court, the counsels for the appellants mainly argued that the prosecution has developed only a false story before the trial court that at any rate, all the chain of circumstances have not been proved to the hilt, that the deceased was also involved in the act of stealing the vehicle and the real culprits are being shielded by the prosecution and the accused are only made scapegoats. Vehement arguments have been raised

regarding the whole exercise done by the investigating agency for identification of the accused by conducting the test identification parade and that the accused are, at any rate, entitled to the benefit of reasonable doubt.

5. It was also argued that the evidence regarding the recovery of material objects and the weapon used by the accused are also not credit worthy and hence the findings rendered by the trial court relying on the said evidence are also liable to be set aside. Counsel also pointed out that certain aspects required proof by way of scientific evidence, the said best evidence was suppressed by the prosecution and the same is a serious lapse affecting the whole case . It is also pointed out that the crucial witnesses are associates/friends of the deceased and without any independent evidence of other witnesses, the guilt of the accused should not have been presumed.

6. In the light of the above arguments, a detailed discussion of the evidence of the witnesses is necessary. P.W.1 is the person who had given the First Information statement, Ext.P1 to the police in connection with the incident. He was the conductor of a bus bearing Registration No.KL-6A 7907 operated by Prakash Motors, which was being run in the route Thopramkudi-Muvattupuzha. While the bus was proceeding to Thodupuzha at about 5.45 p.m. when it reached a place called Cheribhagam, one person who was crawling on the side of the road, showed signal to stop it and even

though the bus passed him, since the conductor saw him signalling, he gave bell to stop the vehicle. On seeing the bus stopping, he alighted the bus and was seated on one of the right side seats. According to P.W.1, injuries were seen on his head and neck and blood was also seen. P.W.1 asked him what had happened. It was repeated by the other passengers also. But he was not in a position to speak and was unable to respond obviously due to the injuries on his neck and head. According to P.w.1, he went out of the bus to see whether there was any vehicle accident but did not find anything. On seeing his condition, the vehicle was taken to a hospital and during this journey the man lied down in the bus itself. Ultimately, the vehicle reached the Taluk Hospital, Thodupuzha. In between, they had informed the police and one of the policeman was also deputed to accompany the injured. On reaching the hospital, the doctor examined him and declared him dead. He gave the F.I. statement in the Kulamavu Police Station in the morning. He identified MOs.1 and 2, the shirt and pants which were worn by the deceased on that day.

7. P.w.31 had conducted the autopsy on the body and Ext.P19 is the postmortem certificate issued by him after the postmortem examination in the Medical College Hospital, Kottayam. There were 22 injuries noted therein out of which injuries 1 to 7 and 15 were fatal injuries. His opinion

was that death was due to the injuries caused on the head and neck. The injuries noted in Ext.P19 are the following:

> "1. Lacerated wound, 1.5 x 0.5 cm. bone deep on right side of head 6.5 cm. above ear.
>
> 2. Lacerated wound 4 x 2 cm. bone deep on the top of middle of head.
>
> 3. Lacerated wound 3 x 1 cm. bone deep, on left side of head, 10 cm above ear.
>
> 4. Contused abrasion, 2 x 1 cm. on the right side of forehead, 1 cm. above outer end of eyebrow.
>
> 5. Lacerated wound 3.5 x 0.5 cm. bone deep horizontal over left eyebrow.
>
> 6. Lacerated wound 2.5 x 0.7 x 0.3 cm. oblique on left side of forehead, lower inner end 1.5 cm. outer to midline and 0.5 cm. above eyebrow.
>
> 7. Contused abrasion, 6 x 4 cm. on left side of forehead, 1 cm. outer to midline and just above injury No.6. Floor of anterior cranial fossa showed comminutted fracture over an area 9 x 7 cm. Under surface of left frontal lobe of brain showed laceration 7 x 5 x 0.3 cm. Subarachnoid bleeding on both sides of brain.
>
> 8. Contused abrasion 2.5 x 2 cm. pm on the front of nose, 1.5 cm below root.
>
> 9. Contused abrasion, 2 x 1 cm on the tip of nose.
>
> 10. Contused abrasion, 3 x 1.5 c.m. over left cheek. Maxilla bone underneath showed frcture. The upper left central incisor tooth showed fracture separation and was missing.
>
> 11. Contusion 4 x 2 x 0.5 cm. on the middle of inner aspect of upper lip.

12. Lacterated wound 2 x 1 x 0.5 cm. on the middle of inner aspect of lower lip.

13. Contused abrasion, 7 x 3 cm over the chin

14. Incised wound 14 x 1 x 0.3 cm. oblique left side of neck, lower front end being 4 cm outer to midline and 3 cm below jaw bone and back end at midline on back of neck.

15. Incised punctured wound, 3.3 x 0.8 x 4 cm. horizontal on the front of middle of neck, 2 cm above the sternum. the trachea underneath front cleanly cut. Both ends of wound sharply cut.

16. Abrasion 0.8 x 0.5 cm on front of right leg, 9 cm below knee.

17. Contused abrasion 6 x 2 cm. on outer aspect of right ankle.

18. Contused abrasion 3 x 0.8 cm. on inner aspect of right ankle.

19. Contusion 7 x 5 x 1 cm. on left palm, at root of thumb.

20. Contused abrasion 6x5 cm on front of left arm, 8 cm below top of shoulder.

21. Incised wound 0.7 x 0.5 x 0.5 cm. on the front of left forearm 6 cm above wrist.

22. Contused abrasion 6x2.5 cm on the top of left shoulder."

8. The hiring of the Indica car by accused 1 to 3 are proved through P.Ws.2, 3, 6, 7 and 8. The accused had approached P.W.6 originally, who was the driver of a tourist taxi bearing registration No.KL-7 AG 6055. It was an Indica car and was parked near the north over bridge, Ernakulam in front of M/s. Broadway Travels. According to P.W.6, he was working as a

driver in a car operated by M/s. Broadway Travels situated in Ernakulam North. P.W.6 deposed that at about 12 noon on 29.3.2002 accused 1 to 3 approached him for a trip to Kattappana stating that they want to bring down computer components from there. Since he was about to make a trip to Thiruvananthapuram, he told them to meet one Raveendran (P.W.2). Immediately he left for Thiruvananthapuram and only when he returned, he knew about the murder of Manikantan. He identified all the three accused in court and he had identified them in the test identification parade also. The evidence of P.W.6 shows that he had occasion to talk to the appellants and he could reflect the incident vividly.

9. The evidence of P.W.6 is corroborated in material particulars by the evidence of P.W.2. P.W.2 at that time was a driver of an ambassador car with registration No.KCF 7150. This car was also being operated by M/s. Broadway Travels. According to P.W.2, P.W.6 asked him whether he will be able to oblige the accused for a trip to Kattappana as P.W.6 was already engaged to go to Trivandrum. P.W.2 immediately agreed and accused 1 to 3 came to him and informed about the purpose for the trip. When P.W.2 showed them the car, he was told that they do not want an ambassador car but they want an Indica car. While they were talking, P.W.3 came to the spot with an Indica car with Reg. No.KL7-AA 5272. When P.W.3 was

asked whether he was willing to have the trip, he told P.W.2 that he has got a trip to Calicut and he assured the accused that another vehicle would be arranged. Accordingly, P.W.3 contacted the deceased through mobile phone. The deceased responded to the call and came down with the vehicle KL-7 AF 1010. P.W.2 deposed further that the deceased agreed to go to Kattappana in his car and the trip started at about 12.30 p.m. He also identified M.O.1 and M.O.2, the shirt and pants worn by the deceased at the relevant time. He had identified the accused in the test identification parade.

10. In the cross examination also, P.W.2 has clearly stated that all the three accused came together and the deceased was contacted over mobile phone under the north over bridge. All the three accused were identified by P.W.2 in court. He also stated that even though normally the drivers have to wear their uniform like white shirt and white pants, 29.3.2002 being Good Friday, that formality was not followed and the deceased was wearing his own usual dress. A suggestion was put to him that before identification parade was conducted, the photographs of accused were published in newspapers and whether he had seen it. This was denied by him.

11. The evidence of P.Ws.2, 3 and 6 are amply corroborated by the evidence of P.W.7. P.W.7 is a person who was operating Classic Tours and

Travels and the car driven by the deceased was entrusted with him for renting out. The evidence of P.W.7 shows that on the date of incident at about 12.30 p.m. the deceased telephoned him and informed him that he is on a trip to Kattappana. P.W.6 asked him whether the party is familiar to him and it was replied by the deceased that even though he was not directly known to them, his friend had introduced. His evidence also shows that the deceased informed him that the accused will be able to pay the money only after reaching Kattappana and even though P.W.7 cautioned him not to leave without getting advance and wanted the deceased to bring them to his office, the deceased informed him that as the party was entrusted to him by his friend, he was leaving for the trip. It is P.W.7 who apart from P.Ws.8 and 20, had identified the body on 31.3.2002 in the Medical College Hospital as that of deceased Manikantan. He had also identified the dress worn by the deceased at the relevant time.

12. Thus, the prosecution has relied upon the evidence of P.Ws.2, 3, 6 and 7 to prove that the car driven by the deceased was hired by the accused on the date of incident for going to Kattappana. Even though the counsel for the appellants/accused strongly argued for the position that their evidence is only artificial and that these witnesses have only been planted by the prosecution, we find that the said argument is not having any force in

the light of the clear evidence available in the case. Apart from the evidence of P.Ws.2, 3, 6 and 7 there is evidence of P.W.8 which corroborates the evidence of the other witnesses.

13. P.W.8 is also another driver of an ambassador car bearing registration No. KL 7 9090 and engaged by Classic Tours and Travels. According to P.W.8, while he and Manikantan were sitting in the ambassador car just near the office of the travel agency, Manikantan received a telephone call through mobile informing him that there is the possibility of a trip to Kattappana. Immediately Manikantan responded and went for finalising the trip with his car. He also identified the dress worn by the deceased at the relevant time. Thus, the entire chain of circumstances leading to the hiring of the vehicle has been proved to the hilt by the prosecution through their evidence.

14. Even though the counsel for the appellants strongly argued that their evidence is shaky and is not credit worthy, the argument developed does not appear to be sound. One of the main arguments raised against the acceptability of their evidence is that they did not go to see the dead body of Manikantan in spite of the fact that information reached them about the murder of Manikantan, in the Medical College. The evidence of P.W.7 shows that it was he who identified the dead body as that of Manikantan. It

is clear from the evidence that the deceased was operating the vehicle as authorised by the travel agency owned by P.W.7. Therefore, it was only normal that the person who identified the dead body was P.W.7 and there is nothing unusual in the other witnesses not going immediately to the Medical College Hospital and confirming the dead body as that of Manikantan. Because of that circumstance alone their evidence cannot be discarded. P.W.8 another driver and P.W.20, the father of the deceased had also gone to the Medical College Hospital to identify the dead body. The next argument is that they are friends of the deceased and therefore the prosecution has planted them so as to form the chain of circumstances. This argument also cannot be accepted for more reasons than one. Firstly, the prosecution was attempting to prove the transaction of hiring the vehicle through these witnesses. The depositions of those witnesses will amply show that all the witnesses, viz. P.Ws.2, 3, 6 and 7 are categoric about the accused approaching the travel agency for hiring an Indica car for a trip to Kattappana. It is of importance to notice that in the cross examination no attempt had been made to challenge effectively their version regarding the hiring of the vehicle by the accused. The evidence of P.W.7 also would show that the deceased had informed him about the trip just before starting the journey and he had contacted him through phone even while he was

proceeding with the trip. The owner of the travel agency and other witnesses are in the business of renting out cars and such a transaction is only a normal one. Therefore, it cannot be stated that their evidence is only artificial and does not inspire confidence in the court. Their evidence is credit worthy and natural and therefore the same is acceptable.

15. Counsel for the appellants relied upon the following decisions of the Hon'ble Supreme Court, i.e. **Bodh Raj alias Bodha and others v. State of Jammu and Kashmir** (AIR 2002 SC 3164), **State of U.P. v. Satish** (AIR 2005 SC 1000), **Din Dayal v. Raj Kumar alias Raju and others** (1999 Crl.L.J.467) and **State of Punjab v. Sucha Singh and others** (AIR 2003 SC 1471) in support of their contentions that the evidence adduced by the prosecution in this case are not sufficient to prove the accused guilty. In AIR 2002 SC 3164, their Lordships have held that circumstantial evidence can be the sole basis for conviction if all the conditions are satisfied. The conditions to be satisfied have been reiterated therein which are the following:

> 1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may' be established;
>
> 2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

3) the circumstances should be of a conclusive nature and tendency;

4) they should exclude every possible hypothesis except the one to be proved; and

5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

The said legal position was reiterated in AIR 2005 SC 1000. Counsel for the appellants relied upon the decision of the Hon'ble Supreme Court in **State of Rajasthan v. Mani Ram** (AIR 2001 SC 2430) to contend for the position that the conduct of the witnesses, viz. P.Ws.2, 3 and 6 in not visiting the Medical College Hospital immediately after coming to know of the murder, is not a natural conduct and therefore their testimony should have been discarded. The facts of the case relied upon by the counsel for the appellants are totally different. That was a case where one of the eye witnesses took no steps to save the deceased from attack by the accused. His evidence was also in conflict with the medical evidence. The Hon'ble Supreme Court did not rely upon the evidence of P.W.11 also as the said witness did not take any steps to save his grandmother with whom he was living, from the attack of the accused. It is only in the above circumstances that their Lordships found that the conduct is not a natural one. In the

decision of the Honourable Supreme Court in 1999 Crl.L.J. 467 also the facts are different. In that case the conduct of the witnesses was found unnatural due to the fact that the eye witnesses who were closely connected with the deceased, did not accompany the deceased to the hospital nor had informed the police about the incident. One of the eye witnesses who was a close relative of the deceased and who had accompanied the deceased to the hospital also did not disclose the name of the accused to the police. It was therefore held that this creates serious doubt regarding truthfulness of evidence of eye witnesses. In the decision reported in AIR 2003 SC 1471, the facts were that the eye witness who was the father of the deceased, did not try to rescue his son who sustained as many as 24 injuries. Therefore, it was held that this conduct makes his presence doubtful. It was in these circumstances the evidence of the eye witness was found most unnatural.

16. Going by the facts of this case, there is nothing in common with the cases cited by the counsel for the appellants. Those are all cases where the eye witnesses even though claimed to have witnessed the incident, did not render anything so to make their position a natural one. Thus, their evidence did not inspire confidence. The circumstances herein are totally different. Merely because P.Ws.2, 3 and 6 did not go to the Medical College Hospital for identifying the body of the deceased, they will not

become untrustworthy. P.W.7 under whom the deceased was operating the taxi, had identified the dead body as that of Manikantan, apart from P.W.8 and P.W.20. Hence, the conduct attributed to P.Ws.2, 3 and 6 in not visiting the hospital to identify the body or to see the dead body, there is not an unnatural one warranting to treat their evidence as untrustworthy. Therefore, we reject the said argument of the counsel for the appellants. The principles stated in those decisions have no application to the facts of this case.

17. The other argument raised by the counsel for the appellants is in regard to the non-acceptability of the evidence regarding identification of the accused in the test identification parade conducted by the investigating agency. The main argument is that the witnesses had the opportunity to see the photographs of the accused through newspapers and therefore their identification in the identification parade is tainted. As a matter of fact, all the witnesses denied seeing the photographs in the newspapers. But even otherwise there is no case that these photographs if at all published, was at the instance of the investigating officer. If at all photographs have been published, the responsibility will lie only with the publisher of the newspaper and not that of the investigating agency. Even otherwise, going by the principles stated by this court in the decision reported in **Sajeevan v.**

State of Kerala (1993 (1) KLT 712) the evidence given by the witnesses identifying the accused in the identification parade cannot be rejected solely on the ground that photographs of the accused were published in the newspapers. This court and the Honourable Supreme Court have clearly held that simply because of that reason the evidence cannot be eschewed. The following paragraph of the decision in 1993 (1) KLT 712 is apposite to the context herein:

> " It is not the work of the investigating agency, but the exercise of journalistic calibre. Investigating agency has, normally, no control over such journalistic adventures. Hence such publication cannot be prevented by the police in a society where freedom of press is guaranteed. It has become very usual that in sensational criminal cases newspapers would display enthusiasm to publish photos of different facets including photos of the accused. It is not necessary that witnesses should see such photos in the newspapers. Even if a witness happens to see the photo of a particular accused in a newspaper we are not inclined to sideline his evidence regarding identification on that score alone. It must be remembered that Kerala is a State where there is proliferation of newspapers. How can a witness be made responsible if newspapers publish the photograph of the accused? If we are to laid down a proposition that identification evidence of a witness is liable to be thrown over-board in cases where newspapers publish the photo of the accused, a good number of witnesses in Kerala would be exposed to the perils of being disbelieved on account of the journalistic adventure and high density of print media in this state. Of course it is open to the court to decide whether a witness's evidence regarding identification was really influenced by such publication."

Apart from that, the <u>evidenciary value</u> of test identification parade is only so as to corroborate the evidence before the trial court. In **Amitsingh**

Bhikamsigh Thakur v. State of Maharashtra ((2007) 2 SCC 310), the Apex Court has stated the legal position in regard to the identification of the accused through a test identification parade. It was held as follows:

> "The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eye witnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code of Criminal Procedure, 1973 (in short "the Code") and the Evidence Act, 1872 (in short "the Evidence Act"). It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution."

The conduct of a test identification parade is only for helping the investigating agency to proceed in the right lines for booking the real culprits. Merely because of any such factors like publication of photographs in newspapers, the veracity of the identification parade is not lost. The evidence of P.Ws.2, 3, 6 and 7 shows that they had occasion to talk to the accused when they came for hiring a taxi. P.W.6 was initially

approached by the accused but subsequently on information by P.W.6, they approached P.W.2. Thus, all these witnesses had ample opportunity for seeing them and also spoke to them in connection with the transaction of hiring the car. Further, the evidence is that they came to the spot at about 12 noon and the vehicle left the scene at 12.30 p.m. Therefore, it is only natural that the witnesses had the required opportunity to see their features and familiarise with them at least for the purpose of going through the transaction. Therefore, it is not a case where the accused were never seen or known by the above witnesses before the incident in question. It is only through their mediation the deceased was contacted for facilitating the tour. Therefore, the infirmities pointed out in the identification made by the witnesses during the test identification parade have no importance at all. It is of importance to notice that when the witnesses had ample time before the identification parade itself to know the accused and remember them, their identification in court itself can be basis for conviction. The Apex Court in the decisions reported in **State of Maharashtra v. Sukhdev Singh and another** ((1992(3) SCC 700 and in **Ronny alias Ronald James v. State of Maharashtra** (AIR 1998 SC 1251) has held that if a witness had any particular reason to interact with the accused and hence could remember about the identity of an accused, in that event, upon the solitary evidence of

identification of the accused in court for the first time, conviction can be based. In AIR 1998 SC 1251 it has been further laid down that where the witness had a chance to inter act with the accused or that in a case where a witness had an opportunity to notice the distinctive features of the accused which lends assurance to the testimony in court, the evidence of identification in court for the first time by the same witness cannot be thrown away merely because no test identification parade was held. Their Lordships of the Supreme Court followed the said principles in the decision reported in **Dana Yadav alias Dahu and others v. State of Bihar** (AIR 2002 SC 3325). Counsel for the appellants relied upon the said decision to argue for the position that identification for the first time in court cannot be accepted as according to them, the identification parade is vitiated by the fact that photographs of the accused were published in newspapers. But the principles stated by the Hon'ble Supreme Court clearly supports the prosecution in this case. It has been held that the identification of the accused made in court by a witness is substantive evidence whereas that of identification in the identification parade is, though a primary evidence but is not substantive and the same can be used only to corroborate the identification of accused by a witness in court. The previous identification in the test identification is a check valve to the evidence of identification in

court of an accused by a witness and the same is a rule of prudence and not law. Their Lordships also held that in exceptional circumstances only , evidence of identification for the first time in court, without the same being corroborated by previous identification in the test identification parade or any other evidence can form the basis of conviction. As already noted above, the decisions of the Honourable Supreme Court in (1992) 3 SCC 700 and AIR 1998 SC 1251 clearly cuts at the root of the arguments raised by the counsel, as this is a case where the witnesses had sufficient opportunity to inter act the accused thereby had reasons to remember their identity. Thus, the argument fails and the same is rejected.

18. The next items of circumstances relied upon by the prosecution is the evidence of P.Ws.4 and 5. P.W.4 is the proprietor of an automobile workshop named "Ajeems Workshop" at Kambam in Tamil Nadu. His version as regards the link to connect the accused with the crime is that accused 1 to 3 approached him in the workshop on 29.3.2002 at about 8.30 p.m. and offered to sell the Indica car with registration No.KL-7 AF 1010. According to him, he directed them to arrive in the morning the next day as it was late already. When he returned in the morning, he saw the accused with the Indica car in the workshop. Thereafter, he informed one of his friends, Annaraja, about the availability of an Indica car for sale. He came

down and inspected the vehicle for purchasing it. Since only photo copies of the documents were shown, P.W.4 demanded original documents and accused left the shop informing him that the originals would be brought to him later. P.W.4 has clearly identified accused 1 and 2 in court as the persons among the three who had approached him on that day. According to him, when he came back in the afternoon, the accused had left and they did not return thereafter also. Since he felt some suspicion about their conduct, he informed the incident at Kumali and Kambam Police Stations. The police party from Kanjar Police Station arrived in the workshop on the next day and while they were questioning the inmates of the workshop, accused 1 and 2 came with the Indica car with registration No.KL-7 AF 1010 and they were arrested then and there. P.W.4 knew about the robbery and murder when the police told him about it. P.W.4 also saw the 2nd accused being taken by the police to recover a packet from a nearby incomplete building and the packet contained two shirts, a kaily, two pairs of chappals and a pant. P.W.4 also identified accused No.3 also as the person who accompanied accused 1 and 2 on the first day and he was the man who went back offering to bring the original papers of the car. By about 8-9 days thereafter, he was brought by the police to the workshop and he identified accused No.3 as one among the persons apart from accused 1

and 2 who approached him on 29.3.2002 offering to sell the car. The version of P.W.4 is natural and convincing. The evidence is clearly trustworthy. It could not be shaken in cross-examination by the accused.

19. The evidence of P.W.4 is corroborated by the evidence of P.W.5 also which was rightly relied upon by the learned Sessions Judge. He was also present at the time when the accused met P.W.4 and when they offered to sell MO.31 car to P.W.4.

20. Apart from the above evidence of P.Ws.4 and 5, there are other circumstances to form the link of the chain to connect the complicity of the accused with the crime. Their presence at Kambam on the evening of 29.3.2002 is amply supported by the evidence of P.Ws. 9 and 24. P.w.24 who is the owner of "Niyazi Traders & Gents Park" at Kambam, has deposed about the accused coming to the shop on 29.3.2002 for buying textile goods. They brought two full sleeve shirts and two dhotis from his shop and M.O. 4 is the plastic kit used in his shop which was identified by P.W.24. He also identified accused 1 to 3 during the investigation conducted by the police. P.W.9 gave evidence that on 30.3.2002 the third accused approached him for furnishing a loan and he gave Rs.20/- to him on the same day. Thus, the above evidence of P.W.4, P.W.5, P.W.9 and P.W.24 amply established the facts about the possession of the property, viz.

MO 31 car by the accused soon after the death of Manikantan on 29.3.2002. The evidence of P.Ws.2, 3, 6, 7 and 8 clearly established the fact that the accused had hired the car for a trip from Ernakulam to Kattappana. Hence, the act of the accused in committing murder for the purpose of committing robbery of the car is clearly established. The accused have no satisfactory explanation also for the possession of the Indica car. In this connection, it may be relevant to consider the principle stated by this court in **Sathyanesan v. State of Kerala** (1984 KLT 774) in the following terms:

> "The possession of the property of the deceased with the appellant soon after the occurrence is thus a strong circumstance against the appellant. This is a case where murder and robbery are proved to have been integral parts of one and the same transaction. Therefore it can be reasonably presumed that not only the appellant committed the murder of the deceased but also committed robbery of her gold ornaments which form part of the same transaction, in the absence of satisfactory explanation for the appellant as to how the property was transferred from the deceased to the accused."

In this case also murder and robbery formed parts of the same transaction, as proved in the evidence. Thus, possession of M.O.31 car driven by the deceased with the appellants is a strong circumstance against them.

21. The prosecution has been able to provide other links in the chain en route of their trip from Ernakulam to Kattappana. P.Ws.11 and 12 are the material witnesses who have been examined by the prosecution to prove the said links in the chain of circumstances. P.W.12 was selling articles in a

bakery belonging to his brother at Kolpara on the fateful day. He identified accused No.3 as a person who alighted from the car KL-7AF 1010 and asked for a cola from the shop. According to him, one of the persons who came down from the car, went to the tea shop nearby. He had clearly stated that it was accused No.3 who came to him for purchasing cola. He noticed the persons alighting from the particular car as he was fond of fancy numbers of vehicles which prompted him to notice the car itself. It is also clear from the evidence that he had identified accused No.3 is the test identification parade conducted before the Magistrate's court. He identified accused No.3 before the Sessions Court also during examination. The other evidence is that of P.W.11, a panshop owner at Arakulam who deposed that the first accused came to the shop asking for a soda. The empty bottle of the soda (MO.15) was recovered from the place of occurrence by the police which was identified by P.W.11 as the one bought by accused No.1 from the panshop. It is clear from their evidence that they had seen accused 1 to 3 on 29.3.2002 while they were travelling in the car driven by the deceased from Ernakulam to Kattappana.

22. Counsel for the appellants argued that the evidence of P.Ws.11 and 12 cannot be believed at all and they are only planted to supplement the links of the chain. We find that the argument of the counsel have only to be

rejected. The recovery of MO.15 from the place of occurrence is clearly proved. There is no improbability as far as the evidence of P.W.12 also is concerned. Hence, it cannot be termed that they are only planted witnesses. Nothing could be brought out in their cross examination also to discredit their version.

23. Then the counsel further argued that there is considerable delay in conducting the identification parade and therefore the said evidence could not have been relied upon by the prosecution. As far as the evidenciary value of test identification parade is concerned, the Apex Court has reiterated in various decisions that it does not constitute substantive evidence and it can only be used as corroborative of the statements in the court. Identification parade is being conducted by the investigating agency to lend assurance to the identity of the accused by the witnesses. Their Lordships of the Supreme Court have held in the decision reported in **Amitsingh Bhikamsingh Thakur v. State of Maharashtra** (2007 (2) SCC 310) in paragraph 13 in the following terms:

> "It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution."

The above dictum clearly points out the fact that even if there is some delay, since the circumstances were beyond control, it cannot be said to be fatal to the prosecution. In this case, after the arrest of the accused, they were being taken to various places and the identification parade was conducted on 25.4.2002. The arrest of accused 1 and 2 was on 31.3.2002 and that of accused NO.3 was on 3.4.2002. P.W.38, the investigating officer has stated in detail the various steps taken for investigating the crime during the said period. There is no allegation that the identification parade is vitiated by any other circumstances except the argument that their photographs have been published in the newspaper, and the witnesses have denied the suggestion about seeing the photographs thus published. In the light of the facts revealed, it cannot be stated that there is considerable delay in conducting the identification parade warranting rejection of the said evidence. The counsel for the appellants in this context, relied upon the following decisions of the Supreme Court also to attack the identification parade conducted, viz. **K.S. Sadnanadan v. State of Kerala** (1999 SC 1086), **Ahmed Bin Salam v. State of Andhra Pradesh** (AIR 1999 SC 1617), **Manzoor v. State of Uttar Pradesh (**1982 SCC Crl. 356) and **Pradeepan v. State of Kerala** (2007 (1) KHC 13). We find that these cases are distinguishable from the facts of the present case.

25. In 1982 SCC Crl. 356, the facts of the case are different from the facts of this case. Therein the identification parade was conducted two months after the date of occurrence. The evidence of P.Ws.1 and 2 in that case was not accepted because of the fact that the witnesses did not give the investigating officer the description of any of the culprits when he examined them and in these circumstances it was held that the witnesses could not have identified the appellants two months after the occurrence. The said dictum will not apply to the facts of this case. In AIR 1999 SC 1086 also, the facts are different, as the witnesses were shown the photograph of deceased before the test identification parade, and hence it was found as unreliable. In **Ahmed Bin Salam v. State of Andhra Pradesh** (AIR 1999 SC 1617) also actually the facts shows that it was not an identification parade and it was only a case where the witness was only replying to the question posed by the police whether he could identify the persons. The Supreme Court held that it was not a test identification parade. The facts of the case decided by the Honourable Supreme Court in 2007 (1) KHC 13 are also not similar. There, it was found that the test identification parade was conducted after great delay which is not explained. Therefore, the facts of the present case are not similar to any of the above decisions cited by the counsel for the appellants. Here in this case, there has not been any delay at

all in conducting the test identification parade and at any rate, there is no long delay also and due explanations have been given in the matter. Hence, we reject the said argument of the counsel. The evidence of P.W.38, investigating officer shows that he had addressed a letter to the Superintendent of Sub Jail, Muvattupuzha on 11.4.2004, not to allow visitors to the accused in view of the conduct of test identification parade. Even without the identification parade, here there are sufficient evidence to show that the witnesses had correctly identified the accused.

26. The other items of evidence is the recovery of material objects and articles effected by P.W.38 under Section 27 of the Evidence Act. Counsel for the appellants argued that the recoveries effected based on the disclosure statement made by accused 1 and 2 are beset with various infirmities and therefore it does not satisfy the requirements of Section 27 of the Evidence Act. Accused 1 and 2 were arrested on 31.3.2002 at Kambam. Even though the counsel argued that recoveries effected are manipulated, a reading of the evidence of P.W.38 as well as the disclosure statements made by the accused proves otherwise. The important articles recovered include Mos.4 to 10 which are articles like pants, shirt, dhothies, chappals and a plastic cover found in the car which belonged to the deceased. The disclosure made by accused No.2 led to the recovery of Mos.37 and 38, two

bloodstained pants. MO.39 knife used by the accused for inflicting injuries on the deceased was also recovered based on the confession statement Ext.P12(a). It is also proved by the evidence of P.W.27 who is a signatory to Ext.P12 mahazar. Based on the confession statement made by the second accused, recoveries of Mos.20 to 24 and M.O.42 and M.O.47 which are the records kept in the car, were effected. They include a conduct certificate, insurance from Benz Motors, vehicle releasing order from Benz Motors, registration certificate and community certificate of the deceased. They were kept in a blue cover of Indus Ind Bank. Similarly, on the basis of the confession statement given by accused No.2, recoveries of MO.11 series, MO.12 series, MO.25 to MO.27 and MO.43 to MO.45 were effected. They include burned portion of photo copy of RC Book, photo copy of permit, warranty card, owner's manual, trip vouchers of M/s. Classic Tours & Travels, a letter from Kerala Public Service Commission and an application receipt for supply of Bharat Gas. Next important item of recovery is the one made on the basis of the confession statement given by third accused at Kambam. The same is the burned portion of the RC Book of the car marked as MO.30 series. The prosecution has also effected recovery of M.O.14 brief case belonging to the deceased which was kept in the car, as well as the mobile phone (MO.3) calculator (M.O.21) and

documents relating to the car, based on the confession statement given by second accused.

27. It is evident from the confession statement of the accused and from the crecoveries effected that those satisfy the requirements of Section 27 of the Evidence Act. Recently, the Apex Court in Amitsingh's case (2007) 2 SCC 310), has held about the various requirements of Section 27 of the Evidence Act in the following words in paragraphs 18 and 19:

> "18. At one time it was held hat the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in Pulukuri Kotayya case and in Udai Bhan v. State of U.P.
>
> 19. The various requirements of the section can be summed up as follows:
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> 1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.
>
> 2) The fact must have been discovered.
>
> 3) The discovery must have been in conseuqence of some information received from the accused and not by the accused's own act.
>
> 4) the person giving the information must be accused of any offence.

5) He must be in the custody of a police officer.

6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible."

The important principle to be noticed is that the expression "fact discovered" includes not only the physical object produced but also the place in which it is produced and the knowledge of the accused as to this. Therefore, the knowledge of the accused in relation to the place of concealment is a relevant fact and is an incriminating circumstance as far as the guilt of the accused is concerned. Even though the appellants' counsel argued that the recoveries have been manipulated, nothing could be brought out in the cross examination of witnesses and also from the investigating officer to discredit the said items of evidence. From the evidence adduced, the defence could not establish that the recoveries are artificial or fabricated. It was argued that P.W.38 was only extracting the confession from the accused to provide links in the chain. But there is no supporting data available in the case to doubt the veracity of the recoveries effected. Therefore, we reject the argument that the recoveries effected are not acceptable and the evidence is tainted.

28. Apart from the above items of recoveries effected, P.W.38 had recovered a soda bottle with name "Dual Club" without its cap from the scene of occurrence and the knife used by the accused for causing injuries. The place of occurrence is a forest area and the knife was concealed underneath the branches of a fallen tree and among the grass. The counsel argued that it is an open place accessable to all and therefore the said item of evidence cannot be relied upon. Admittedly, the place is a forest area and going by the place of concealment of the knife, we find that there is no infirmity in the said item of evidence also. It cannot be said that the place has got access to public and that the object was remaining in public gaze. From the place of occurrence, other objects recovered are MO.15 soda bottle, MO.13 foot wear belonging to the deceased, MOs.35 and 36 blood stained stone and grass. The recovery of the above articles also supports the case of the prosecution as the place of occurrence is a lonely forest area on the side of the Highway leading from Ernakulam to Kattappana and it has already come out in evidence that the accused have hired the car for a trip from Ernakulam to Kattappana. Therefore, going by the principles stated in (2007) 2 SCC 310, we reject the argument of the counsel for the appellants.

29. It was further argued that the prosecution has failed to adduce any scientific items of evidence as regards the messages passed on by the

deceased to P.Ws.3 and 7 using his mobile phone. It is argued that failure of the prosecution to produce the relevant evidence to show that the deceased had talked with P.Ws.3 and 7 in his mobile phone while the transaction for the trip was being fianlised, is fatal to the prosecution. It was also argued that it casts a suspicion on the entire prosecution story. When there is direct ocular evidence regarding the transaction which is trustworthy, the alleged failure, if any, of the prosecution to support the same with scientific evidence is not at all fatal. The defence could not discredit the evidence of P.Ws.2, 3, 6 and 7 as to the hiring of the taxi from Ernakulam for a trip to Kattappana. Further, immediately after the occurrence on the same day, they were found in possession of the vehicle at Kambam. All the circumstances are telling and clearly establishes the chain of circumstances leading to the complicity of the accused in the crime. Therefore, the said argument is also not correct.

30. Counsel for third accused strongly contended that third accused has been falsely implicated in the crime and the evidence, if any, are not sufficient to prove his complicity with the crime. It was argued that he was not found in the company of accused 1 and 2 when they were arrested at Kambam on 31.3.2002. The recovery of articles through accused No.3 is not at all material one and only the part of the burned RC Book and some

ash alone have been recovered based on the confession statement made by him. It was also strongly contended that the evidence of P.W.12 who had occasion to see the third accused when he approached P.w.12, to buy cola is clearly artificial. We have already discussed the evidence of P.Ws.11 and 12 and we have found that their evidence is also natural and convincing and the defence could not shake their evidence at all. Apart from that, the presence of accused No.3 along with accused 1 and 2 have been clearly spoken to by P.Ws.2, 3 and 6 at Ernakulam when they arrived there for arranging the car. It is clear from the evidence that all the three were together from the initial stages itself and the presence of third accused at Kambam is also proved by witnesses P.Ws.4 and 5 as well as P.Ws.9 and 24. P.W.24 has clearly stated that all the accused came together for buying textile goods in his shop. P.W.9 had acquaintance with the third accused as he had been in his shop several times earlier and was prepared to part with Rs.20/- as a loan. Therefore, the evidence clearly established his presence at Kambam. When the hiring of the car from Ernakulam to Kattappana by all the accused have been proved and as it is found that accused NO.3 was also involved along with accused 1 and 2, his complicity in the crime cannot be disputed at all. One of the important factors regarding his complicity is the identification made by P.W.4 as accused No.3 is the person who was with

accused 1 and 2 when they approached him in his workshop for selling it on 29.3.2002. Further, as found already, P.Ws.2, 3 and 6 had ample opportunity to talk to them before car was arranged and they had also identified him as the person who accompanied accused 1 and 2 for hiring the taxi in question. Therefore, as far as the involvement of accused No.3 is concerned, the same is clearly established from the evidence.

31. Here is a case where, for the purpose of committing robbery of the car, the accused pretended themselves to be interested in carrying electronic equipments from Kattappana and were successful in hiring the taxi. The prosecution has been able to prove the important links regarding hiring of taxi through P.Ws.2, 3, 6, 7 and 8. Their presence at Kambam is proved through P.W.4 and other witnesses. The evidence of P.Ws.11 and 12 will show that all the three accused were travelling together along with the deceased on the way from Ernakulam to Kattappana. Counsel for the appellants had a further argument that the arrest of the accused at Kambam on 31.3.2002 by P.W.8 is also stage managed. According to the counsel, the evidence of P.W.4 would show that on 31.3.2002 he is alleged to have informed the police station, Kumali and Kambam about the suspicious character of the transaction of the proposed sale, but the arrest has been effected by P.W.38, the Circle Inspector of Police, Kanjar. In this

connection, evidence of P.W.14 who was the Head Constable of Kumali Police Station at the relevant time, is important. His evidence shows that at about 7.30 p.m. on 30.3.2002 P.W.4 had contacted him over phone to the Police Station and asked whether there is any information regarding theft of any car. The information that three people had approached him for selling the Indica car has also been passed on and the number of the car was also mentioned. According to him, at the relevant time, another message was also available with him about the death of one unidentified person near the forest area at Kulamavu. Accordingly, he had transmitted the messages to Dy.S.P. Thodupuzha. The evidence of P.W.38, the investigating officer will also show that messages have been received from these police stations and also from the Central Police Station, Ernakulam that a driver who had made a trip from Ernakulam to Kattappana had not returned with his taxi car. He was informed about it by the Dy.S.P . In view of the above evidence, the said arguments of the counsel for the appellants have also no merit. The above evidence only lends credence to the prosecution story.

32. The accused were found last seen with the deceased and they were found with the car driven by the accused and there was no proper explanation of the possession of the car also by them. It is seen that the chain of evidence is complete and the circumstances would clearly establish

the guilt of the appellants. It is not a case where there are conjectures and suspicions as regards the links proved by the prosecution. It is a clear case where the circumstances have been established by cogent and reliable evidence. The circumstances proved are consistent with the hypothesis of the guilt of the accused and the only probable conclusion is against the innocence of the accused. It is of importance to notice one more aspect about the evidence given by P.Ws.13, 15 and 37 on the brutal attempts made by them for committing robbery of vehicles during the last week of March 2002 itself. Considering the totality of circumstances, we find that the

appellants are guilty of the crime and the conviction and sentence imposed on them is only to be confirmed and we do so. Hence, the appeals are dismissed.

(J.B. Koshy, Judge.)

(T.R. Ramachandran Nair, Judge.)

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